

# ANSWERS

*For the Town of St. Andrews*

*Against*

*The University there.*

**T**He University of *St. Andrews* not satisfied with the Lords Interloquitor of the 18th. of *June* finding that Institution of the University could not prejudice the Right formerly granted to the Town of *St. Andrews*, as also that *St. Andrews* was acknowledged to be a Burgh by the Universities Charter, and that the Act ratifying their Priviledges, did fall under the Act *Salvo*, and that the Clause in the Universities Foundation, comprehends only punishment of Injuries done against their Members, but not done by them, and that the Universities Jurisdiction without their Precinct is but cumulative: Have given in a long Bill reclaiming against the said Interloquitor, which in effect is nothing upon the matter, save a Repetition of what was formerly proponed and repelled.

After an Appologie for the length of their former Petition, which your Lordships reiected, without ordering it to be seen and answered, the University of *St. Andrews* doth now expect that a short Abbreviat thereof should have better success, and therefore in the first place indeavour to remove any prejudice that may be objected against their Jurisdiction, as more than necessary for the School-Masters, &c.

As to which it is shortly answered for the Burgh, that the question berwixt them and the University, is not here of expedience, or inexpedience, but precisely in point of Right; And therefore since it were unjust, which is more than inexpedient, that the Burgh should be deprived of their undoubted Rights to please the University: It is hoped that your Lordships will adhere to your former Interloquitor, but the Grounds that the University propose to be considered, are, 1. That the University was erected three hundred years ago, by the Authority of the Bishop, King, and Pope: At which time the Town having received the University into its Bosome, must now allow their Priviledges to be extended with all favour possible, and why not, providing it be without prejudice of the Towns, which the University can never reasonably expect, that the Town should cede in their favours. 2. That



2. That notwithstanding of the Erections of Burghs Royal, the King may by vertue of his prerogative erect an University within any Burgh of the Kingdom, with a Jurisdiction privative as to its own Members. But 1. The King hath not done so as to the University of St. Andrews as your Lordships have found. And 2. Your Lordships have further found, and that upon a most just ground, that the Foundation of the University could not prejudice the Towns prior Rights.

3. It is alledged for the University, that the general Presumption of the Towns being a Burgh, could not prejudice the known Power and Privilege of the Bishop, which was such, that the Towns Charter granted by King James the Sixth, is granted with the Bishops express consent; As to which it is answered, if the Bishop be consenting to the Charter granted by King James the Sixth, in favours of the Burgh, *abundantia juris non nocet*, but by what logick the University will hence infer, that their posterior Erection should prejudice the Town as to their prior Privileges, and take away the Towns *ius quæsitum*, without their own consent, is that which neither Law nor Lawyers can understand.

The Petitioners say that since the Town had no special Privilege, the time of the Erection of the University which could thereby receive prejudice, It is presumed in a matter so ancient that the Town had no such privilege, But what place for presumptions in a case of itself so clear, all the Town pretends to, is that their prior rights as a Burgh Royal cannot be prejudged by any posterior deed of the same granter, And this in Law and reason is most certaine, and all which your Lordships have found, or that the Town acclaims But 4. The University, flee to the Towns long Taciturnity, and the presumed consent which they say is farther inferred from the Provost of St. Andrews his being a witness to King James Charter in favours of the University; But could the Provosts subscribing a witness prejudice the Town of their Rights when even his express consent could not do it, or can the University be so absurd as to presume any thing from the Towns Taciturnity, when the Town on the contrair doth positively alledge that untill now their Rights and Privileges were never offered to be violated by the University.

But though these grounds be so weak in themselves, and already repelled by your Lordships, yet the University hath the confidence to alledge that the Burghs prior Rights are only imaginarie in prejudice of their constitution, which in effect appears to be more a Lesion in the Universities ordinary good sense, since all that the Burgh craves, or that your Lordships have found in their behalf, is that the Real Rights that they had before the Erection of the University, may not be thereby prejudged.

The University again repeats, what they alledged upon the Act of Parliament 1621 in their favours and will have it not to fall under the Act *salvo*, when yet there is nothing more express than that the Act *salvo* comprehends not only Ratifications, but all Acts made in favours of particular parties such as the University is, without hearing the contrair party concerned.

In the next place, they alledge that their constitution gives them power over their own Members in case of small injuries, which as to injuries done to them, and providing the same be cumulative is not denyed; and is all which either they can pretend, or can be inferred from their constitution.

They do farther plead for a Jurisdiction even as to Injuries done be them from the necessity thereof, in order to the Governing of the Spirits of young Noblemen and Gentlemen; But not to trouble the University by telling them, that it were a wiser part in their Government not to fill the heads of young Noblemen and Gentlemen with notions of Jurisdiction, that do more di-



distract than edifie, why should the University still pretend to that which their Charter does not give them, there being nothing more plain, than that all the Jurisdiction given them is as to small Injuries *vobis factos* or *in vos commissos*.

But the University sayes, that from the records of the University it can appear, that they have Jurisdiction for Injuries done by them, and that the Act of Parliament 1621. having made them only lyable to the Council, Session, and Justiciary; doth powerfully exempt them from the Town. But 1. This exemption they plead from the Act of Parliament 1621. is only constructive and no expresse provision in the Act. 2. The Act hath already been found by your Lordships, to be comprehended under the Act *salvo*. 3. The Universities own constitution is most expresse, giving them only Jurisdiction in the case of small Injuries done to them, and that not exclusive of the Towns Power, but cumulative as your Lordships have found. And 4. The Universities records are not particularly alledged on, were never seen by the Town, and at best can only be the Universities Testimony in its own behalf.

But the University intreats that the Lords would ordain the Magistrats to produce any Document of their own, that they had a Jurisdiction before the University. But if as your Lordships have found this to be proven from the Universities own documents: It is certain the much stronger against them, then if it were proven by their own.

And where it is alledged, that the Bishop of St: *Andrews* disposed the Jurisdiction of the Regality in several parcels, more than an hundred years after the Erection of the University, with a privative Jurisdiction over the Town, to punish all great Crimes committed by the Inhabitants, and that till of late, the Town had no power even over petty Riots. To which it was answered, that this is all *gratis dictum* without any Document or Instruction, 2: That the Town's being undoubtedly a Burgh Royal, before ever the University was erected, is proven, both by their antient Charters, expressely ratified in K: *James* the sixths Charter, which was produced, and also is acknowledged by the Universities own Erection, And therefore 3: To say that the Town had not the Jurisdiction of a Burgh Royal ( though really a Burgh Royal ) until of late, is groundless and absurd.

In the last place, the University alledge, that whatever Jurisdiction they have it must be privative, as is clear by the Act of Parliament 1621. But 1: That Act of Parliament, as your Lordships have found is under the Act *salvo*, 2: Was it ever imagined, that a posterior Deed flowing from the same Granter, can be privative of this Granter's prior Deed, which is exactly the Universities case, and have been expressely found by your Lordships.

But 2. They alledge, that as to the Jurisdiction of the Town *quæ qualis quantaque fuit*, do not appear before K; *James* the sixths time, but this is downright false, as hath been often cleared.

And 3: The University alleges, that wherever a Society is indued with a Jurisdiction, and to be governed by it self, or where a Jurisdiction is granted for certain persons and causes, the same must be privative: But *quo warranto* this is alledged doth not at all appear, and the other principle of Law, *viz.* That no posterior Deed can take away prior Deeds granted by the same Author, is that which the University will never get over.

To sum up all the University says, That rather than they lose the Right, they will prove Possession for the Jurisdiction acclaimed. To which it was answered: 1: That this offer is no ways competent, to be made after Decreet pronounced, specially when they were so often urged to propone it before. 2: It is evident by the Universities very way of proponing it, that it was only proponed *tanquam ultimus conatus*, *viz.* rather than we lose any thing of our Right, and consequently to cast off and delay the Town. And therefore, since your Lordships may plainly see, that all offered by the University in this Bill, is a meer Repetition of what is already repelled, and that all designed by it, is to hinder the Extracting of the Lords Decreet, and to keep the matter open, which is most prejudicial, both to Citizens, and Scholars

It is humbly craved, the Lords would refuse the desire of the Petition and ordain the Towns Decreet to be Extracted, without farther delay, according to Justice, and your Lordships Answer.



